U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

MAR 11 2004

FILE: [redacted] Office: NEW DELHI, INDIA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India and is now before the Administrative Appeals Office (AAO) on appeal. The Officer in Charge's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant is a native and citizen of India who entered the United States on April 20, 1987, without a lawful admission or parole. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain a visa through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen father. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen father and lawful permanent resident (LPR) mother.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relatives and denied the application accordingly. *See Officer in Charge's Decision* dated July 30, 2002.

On appeal the applicant asserts that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, "CIS") misapplied the extreme hardship standard set forth in section 212(i) of the Act. The applicant presented an affidavit from his U.S. citizen father discussing the hardship he and the applicant's LPR mother would experience if the waiver application was denied.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO has found that in order for an individual to be found inadmissible under section 212(a)(6)(C) of the Act, the fraud or willful misrepresentation of a material fact must be made to an authorized official of the U.S. government.

In *Matter of Y-G-,* 20 I&N Dec. 794 (BIA 1994), the Board of Immigration Appeals stated:

> It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the Untied States Government in order for excludability under section 212(a)(6)(C)(i) of the act to be found.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation to a U.S. government official. The Consular Officer at the America Embassy in New Delhi and the Officer in Charge did not provide any documentary evidence to show that the applicant attempted to obtain a visa through fraud or misrepresentation. Although the Central Index System indicates the applicant's Code of Admission as B-2 nonimmigrant, there is no documentation to substantiate this. According to the record of proceedings the applicant traveled to Mexico and with the help of an agent entered the United States illegally on April 20, 1987. There is nothing in the record to indicate that the applicant applied for or used any type of visa for that entry. Nor is there any indication of fraud or willful misrepresentation in any application he submitted subsequent to that illegal entry. On September 15, 1992 the applicant was granted voluntary departure in accordance with 8 C.F.R. § 242.5. The authorized period of voluntary departure was valid for two years. The applicant applied for an extension of his voluntary departure, his application was approved on November 29, 1994 and voluntary departure was granted until September 15, 1996. According to the applicant's application for an immigrant visa he departed the United States in September 1995 prior to the expiration of his voluntary departure and has been residing in India since then

The AAO finds that the Officer in Charge erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, a waiver of inadmissibility is not necessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The Officer in Charge's decision is withdrawn, as it has not been established that the applicant is inadmissible. The appeal is dismissed as moot.